

Agreement between the Government of the Republic of Venezuela and the Government of the Republic of Cuba for the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Venezuela and the Government of the Republic of Cuba, hereinafter referred to as the Contracting Parties:

Convinced that create and maintain favourable conditions for investments of investors of each Contracting Party in the territory of the other, will contribute to the achievement of technological and economic well-being of its peoples, as well as the development of cooperation and friendship between them;

Convinced that to achieve these purposes is important to assure the investment legal security and impartial and efficient means for the settlement of disputes;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investor" means any natural or juridical person of a Contracting Party that makes an investment in the territory of the other Contracting Party.

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(a) The term "natural person of a Contracting Party" means any natural person who is a citizen of that Contracting Party in accordance with its legislation.

(b) The term "legal person of a Contracting Party" means any legal entity, whether public or private, profit or non-profit, constituted in accordance with the laws of that Contracting Party or effectively controlled by investors of that Contracting Party.

2. The term "Investments" includes all kinds of property and rights invested by an investor of one Contracting Party in the territory of the other. These include

(a) Property and all other rights and security interests in movable or immovable property.

(b) Shares, quotas or any other form of participation in enterprises of any kind.

(c) Rights to the payment of a sum of money and rights to any contractual benefit, which, in both cases, are related to an investment.

(d) Intellectual property rights, including copyrights, patents, trademarks, know-how and technical processes, goodwill and goodwill.

(e) Concessions and other rights granted under public law.

3. The term "territory" includes, in addition to land territory, marine and submarine areas in which any of the Contracting Parties exercises or may exercise, in accordance with international law, sovereignty or jurisdiction.

Article 2. Existing and Future Investments

This Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other

Contracting Party prior to or after its entry into force, but shall not apply to disputes arising out of acts or events that occurred prior to its entry into force.

Article 3. Promotion and Admission

Each Contracting Party shall promote and admit in its territory in accordance with its laws, investments of investors of the other Contracting Party.

Article 4. Treatment

1. Each Contracting Party shall, in accordance with the norms and standards of international law, accord to investments of investors of the other Contracting Party in its territory fair and equitable treatment, guarantee them full legal security and protection, and refrain from hindering by arbitrary or discriminatory measures their administration, management, maintenance, use, enjoyment, expansion, sale or liquidation.

2. The treatment accorded by each Contracting Party to investments of investors of the other Contracting Party in its territory, or to the investors themselves in connection with their investments, shall be no less favorable than that accorded in comparable circumstances to investments of its own investors or to those of investors of any third State, or to such investors in connection with their investments.

3. The provisions of the preceding paragraph shall not apply to advantages which a Contracting Party has accorded to investors of a third State or to their investments by virtue of its participation or association in an integration, free trade, customs union or other treaty of a similar nature, or by virtue of a treaty for the avoidance of double taxation.

4. This Agreement shall not preclude the application of rules of international law or of the laws of either Contracting Party now existing or hereafter established which provide for more favorable treatment of investments.

5. Each Contracting Party shall comply with any obligations it has agreed or may agree with an investor of the other Contracting Party with respect to the treatment of its investment.

Article 5. Free Transfer

1. Each Contracting Party shall permit the unrestricted transfer, in a freely convertible currency agreed by the parties and the rate of exchange prevailing on the amounts of money related to an investment, which include, though not exclusively:

- (a) Interests, profits, dividends, royalties and other income derived from investment;
- (b) Amounts for the payment of claims or other debt directly related to the investment or for the payment of royalties and other payments in connection with intellectual property rights;
- (c) Amounts necessary for the procurement of goods or services for the maintenance or extension of the investment;
- (d) Amounts derived from the total or partial sale or liquidation of the investment;
- (e) Sums received by way of compensation.

Article 6. Expropriation

1. Neither Contracting Party shall expropriate investments of investors of the other Contracting Party, nor apply to them measures tantamount to expropriation, unless it is in the public interest, in accordance with the law, and by means of prompt and adequate compensation.

2. Compensation shall be paid in freely convertible currency at the full market value of the investment immediately before the measures are taken or at the time the impending measures become public knowledge, whichever is higher, and shall include interest at market rate up to the time of payment.

Article 7. Compensation for Losses

If a Contracting Party grants compensation to its own investors or to those of a Third State for damage suffered by their investments as a result of internal or external armed conflict, insurrection, riot or any other disturbance of public order, it shall grant compensation on no less favorable terms to the investors of the other Contracting Party.

Article 8. Subrogation

If a Contracting Party, or a duly authorized public or private entity of that Contracting Party, indemnifies an investor of that Contracting Party under an insurance or other guarantee to cover non-commercial risks in connection with its investment in the territory of the other Contracting Party, the latter shall recognize the subrogation of the former to the investor's rights under this Agreement.

Article 9. Disputes between an Investor of One Contracting Party and the other Contracting Party

1. Any dispute arising between an investor of a Contracting Party and the other Contracting Party concerning the latter's compliance with the provisions of this Agreement in relation to the latter's investment, and which is not settled amicably, shall, at the option of the investor, be submitted to the courts of the Contracting Party which is a party to the dispute or to arbitration.
2. An investor who has chosen to submit the dispute to the courts of the Contracting Party may not thereafter resort to arbitration.
3. An investor who has opted for international arbitration may submit the dispute to an Ad-Hoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
4. In any case, the jurisdiction of the arbitral tribunal shall be limited to determining whether the Contracting Party concerned has breached any obligation under this Agreement and, if such breach has occurred and has caused damage to the investor, to fixing the amount to be paid by the Contracting Party to the investor as compensation for such damage.
5. The Contracting Parties consent to submit the dispute to arbitration in accordance with this Article and undertake to enforce the corresponding arbitral awards, which shall be final and non-appealable.
6. The investor and the Contracting Party concerned may agree on any other means of settling disputes arising between them.

Article 10. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or implementation of this Agreement and which is not settled through the diplomatic channel, be submitted to arbitration at the initiative of any of the Parties.
2. Each Party shall appoint an arbitrator to integrate the arbitral tribunal. The two arbitrators so appointed shall designate by common agreement the third arbitrator who shall chair.
3. If within sixty days from the date on which the requested to submit the dispute to arbitration, a Contracting Party has not made the appointment of an arbitrator, the other party may request the President of the International Court of Justice to make the appointment.
4. If within sixty days from the appointment of the second of the two arbitrators, both arbitrators have not been appointed, the third either Contracting Party may request the President of the International Court of Justice to make the appointment.
5. If the President of the International Court of Justice is prevented from doing the designation or is a national of one of the Contracting Parties shall be made by the Vice-President. If that is prevented from doing the designation or is a national of either Contracting Party, it shall be made by the most senior judge who is not prevented or is a national of one of the Contracting Parties.
6. Except to the extent that the parties agree otherwise, the tribunal shall determine its own procedure. Each Party shall bear the fees and expenses of the arbitrators appointed as appropriate. The Contracting Parties shall be borne in equal parts by the fees and expenses of the Chairman as well as the other costs of the arbitral tribunal, unless the Committee decides otherwise.

Article 11. Duration

1. The Contracting Parties shall notify each other of the completion of their respective internal procedures for the entry into force of this Agreement, which shall enter into force at the time of the second such notifications.
2. This Agreement shall be in force for an initial period of ten years. Upon expiration of that term, it shall remain in force for

an indefinite period of time. Either Contracting Party may terminate it upon its expiration or at any time thereafter by giving notice to the other Contracting Party at least one year prior to the date of termination.

3. In the event of termination of this Agreement, its provisions shall continue to cover for an additional period of ten years investments made prior to the date of its termination.

Signed in Havana on 11 December 1996, in duplicate in the English language both texts being equally authentic.

For the Government of the Republic of Venezuela

Miguel Angel Burelli Rivas

Minister of Foreign Affairs

For the Government of the Republic of Cuba

Roberto Robaina González

Minister of Foreign Affairs

Protocol

On subscribing the Agreement between the Government of the Republic of Venezuela and the Government of the Republic of Cuba for the Reciprocal Promotion and Protection of Investments, the parties agree to the present Protocol, which is an integral part of said Agreement.

1. The expression "in comparable circumstances" used in Article 4 paragraph 2 shall be understood, with respect to the Republic of Cuba to mean the treatment given to national or foreign investments governed by the national legislation covering foreign investment.

2. The expression "prevailing exchange rate" used in Article 5 shall be understood, with respect to the Republic of Cuba, as the official exchange rate applicable to such transfers. Such exchange rate shall be substantially the same for investment-related payments into and out of the country.

3. In the event that in the future both Parties become parties to the Convention on the Settlement of Investment Disputes between States and Nations of other States, signed in Washington on March 18, 1965, the arbitration referred to in Article 9, paragraph 3, shall be carried out at the International Center for Settlement of Investment Disputes, ICSID, and only in the event that, for any reason, ICSID is not available, it shall be submitted to arbitration under the UNCITRAL Arbitration Rules.

For the Government of the Republic of Venezuela

Miguel Angel Burelli Rivas

Minister of Foreign Affairs

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